
THE MARYLAND BENEFIT CORPORATION ACT

Maryland Corporations and Associations Article ("C.A.") §§ 5-6C-01 through -08

Effective October 1, 2010

CREATION OF THE BENEFIT CORPORATION

A Benefit Corporation must create a "general public benefit" (included in the corporation's statement of purpose), which benefit must be measured by an independent third-party standard.

"GENERAL PUBLIC BENEFIT"

A "general public benefit" means a material, positive impact on society and the environment, as measured by a third-party standard, through activities that promote a combination of specific public benefits.

Specific public benefits as set forth in the statute are:

- *Providing individuals or communities with beneficial products or services;*
- *Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;*
- *Preserving the environment;*
- *Improving human health;*
- *Promoting the arts, sciences, or advancement of knowledge;*
- *Increasing the flow of capital to entities with a public benefit purpose; or*
- *The accomplishment of any other particular benefit for society or the environment*

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The Maryland Benefit Corporation Act

THIRD-PARTY STANDARD

A “third party standard” is “a [transparent] standard for defining, reporting, and assessing best practices in corporate social and environmental performance” developed by an independent entity.

Transparency in the standard is achieved when certain information about the standard is publicly available:

- *The factors considered when measuring the performance of the business;*
- *The relative weightings of those factors;*
- *The identity of those who develop and control changes to the standards; and*
- *The process by which those changes are made.*

The statute does not specify acceptable independent third-party standards entities. However, B Lab, in Berwyn, Pennsylvania, has established a ratings system for certifying and auditing triple bottom-line companies. Other entities will likely emerge as acceptable third-party standards entities, so long as their process complies with the statute’s requirements.

DIRECTORS

A Benefit Corporation director does not have a separate duty to the beneficiaries of the public benefit purposes of the Benefit Corporation. However, the director must consider the effects of any action or decision not to act on:

- *The stockholders of the benefit corporation;*

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- *The employees and workforce of the benefit corporation and the subsidiaries and suppliers of the benefit corporation;*
- *The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation (as opposed to general beneficiaries of the public benefit purposes, who the director is not obliged to consider);*
- *Community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or the subsidiaries or suppliers of the benefit corporation are located; and*
- *The local and global environment.*

A Benefit Corporation director may also consider any other pertinent factors, or the interests of any other groups, as the director deems appropriate. So long as the director performs his duties in accordance with C.A. § 2-405.1 (governing directors' standard of care for Maryland corporations), he or she will enjoy immunity from liability under section 5-417 of the Maryland Courts and Judicial Proceedings Article.

REPORTING

A Benefit Corporation must deliver an annual benefit report to each stockholder within 120 days of the end of its fiscal year, containing a description of:

- *The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created;*
- *The ways in which the benefit corporation pursued any specific public benefit that its charter states is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created; and*
- *Any circumstances that have hindered the creation by the benefit corporation of the public benefit.*

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The Maryland Benefit Corporation Act

It must also contain an assessment of the societal and environmental performance of the benefit corporation prepared in accordance with a third-party standard applied consistently with the prior year's benefit report or accompanied by an explanation of the reasons for any inconsistent application.

A Benefit Corporation must post its most recent benefit report on any public portion of its website, or, if it has no public website, provide a copy free of charge on demand to anyone who requests a copy.

IS A BENEFIT CORPORATION THE RIGHT CHOICE?

Many considerations influence whether a business elects to form as a Benefit Corporation. Among factors that a business might consider pertinent are: nature of the business and its mission; likely source of funds and whether the business wishes to attract mission-aligned capital; whether investors would likely view a general benefit purpose as enhancing or detracting from the business' ability to generate a profit; ability to attract and retain top employee and management talent; desire to include social benefit in the corporate mission without exposing directors to potential liability for failure to exercise sound business judgment by considering other factors. The foregoing is not exhaustive but is meant merely to illustrate some of the factors a business may wish to consider in deciding whether to form as a Benefit Corporation.

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